*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO : 21283 of 1994

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% 6-07-2005

G.Gangaram Petitioner

Vs.

$ The A.P.S.E.B. rep. By its Secretary,

Vidyutsoudha, Hyderabad Respondent

! Counsel for the petitioner: :Mr. A.Sanjeev Kumar

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Counsel for respondents: Mr. Samineni Kishore

< Gist:

>Head Note

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1) 2003(5) ALD 599 (DB)

2) 1991 SCC (L & S) 998

3) 1999 (3) ALD 645

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 21283 of 1994

Between:

G.Gangaram, S/o. Sri G.Narayana.
R/o. Manuguru, Khammam.

..... PETITIONER

AND

1 The APSEB., Rep. Secretary.
Vidyut Soudha, Hyderabad.
2 The Chairman, APSEB.,
Vidyut Soudha, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records relating to the impugned proceedings Memo.No.DP/DMV/1166-R1/90-8, dated 25/08/1994 on the file of the Respondent No.1 and quash the same as arbitrary and illegal by way of issue of a writ of Certiorari or any other appropriate writ or order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.ANDAPALLI SANJEEV KUMAR

Counsel for the Respondents: MR. Samineni Kishore, Standing Counsel

The Court made the following :

ORAL ORDER:

The petitioner, while working as the Assistant Divisional Engineer with the respondents at Ramachandrapuram, was transferred to Lower Sileru Project, East Godavari District, vide proceedings dated 28-11-1991. On his representation, expressing his inability to join at Sileru Project, he was given posting orders on 28-10-1992 to join at Manuguru. Since the petitioner did not join duty thereat and did not apply for leave, a charge sheet was issued on 18-10-1993 to the following effect:

“It is reported that Sri G.Gangaram, Assistant Divisional Engineer (Elecl.) has absconded from duty with effect from 29-10-91 by deserting that post and absconded himself unauthorisedly there after without applying for any leave. This constitutes misconduct as per A.P.S.E.Board (Revised) Conduct Regulations”

The petitioner submitted his explanation to the charge sheet on 17-1-1994. Not being satisfied with the explanation, an enquiry was ordered wherein the charge levelled against the petitioner was held proved. A show cause notice was issued on

29-4-1994, enclosing a copy of the enquiry report, asking the petitioner to show cause as to why stoppage of two increments with cumulative effect not be imposed besides treating the period of unauthorized absence from 29-10-1991 till the date of joining duty should not be treated as *dies non.* The petitioner submitted his explanation to the said show cause notice resulting in the impugned order dated 25-8-1994 being passed by the 1st respondent whereby the petitioner was imposed the punishment of stoppage of two increments with cumulative effect besides treating the period of unauthorized absence from 29-10-1991 till the date of joining duty as *dies non* as the **allegation of unauthorized absence and his non-submission of immovable property statement were held proved. (emphasis supplied).**

Sri A.Sanjeev Kumar, learned counsel for the petitioner contends that while the charge, as specified in the charge memo dated 18-10-1993, related only to unauthorized absence for which a departmental enquiry was conducted and consequent upon which the show cause notice was issued, in the said show cause notice dated 29-4-1994 another allegation, relating to an enquiry conducted by the Anti Corruption Bureau was also included though the said allegation did not form part either of the charge sheet dated 18-10-1993 nor was it the subject matter of the departmental enquiry. He refers to paragraph 3 of the show cause notice dated 29-4-1994 which reads as under:

"In addition to the above, during the enquiry conducted by Anti Corruption Bureau it was revealed that Smt. G.Sunitha W/o Sri G.Gangaram, Asst. Divisional Engineer (Elecl.) had purchased in 4/85 a Plot of 275 Sq. yards at a cost of Rs.11,000/- + registration charges of Rs.412.50 at Sikh village, Secunderabad and constructed a house thereon. He has failed to intimate to the Board about the purchase of site and construction of house by his wife as required under Regulation – 5 of the A.P.S.E.Board Employees (Revised) Conduct Regulations. He has also failed to file Annual Property Returns as required under Regulation 5 of the A.P.S.E.Board Employees (Revised) Conduct Regulations"

Sri A. Sanjeev Kumar contends that since the punishment imposed on the petitioner was on the basis of the allegations, of both unauthorized absence and non-submission of immovable property statements having been held proved, the order of punishment is liable to be set aside, inasmuch as the allegation of non-submission of immovable property statement was neither the subject matter of the charge memo dated 18-10-1993 nor was it the subject matter of the departmental enquiry

conducted against the petitioner. Sri A.Sanjeev Kumar further contends that the disciplinary authority had taken into consideration extraneous factors, neither part of the charge memo nor the subject matter of departmental enquiry, while imposing punishment on the petitioner and as such the order of punishment is liable to be set aside.

Sri Samineni Kishore, learned counsel for the respondents, contends:

a. The petitioner has an alternative remedy by way of preferring an appeal under the Regulations and inasmuch as he has not exhausted the alternative remedy of appeal, the writ petition as filed is liable to be dismissed *in limini*.

b. The punishment imposed on the petitioner was only for the charge of unauthorized absence and not for non-submission of immovable property statement and mere mention of the fact regarding non-submission of immovable property statement in the show cause notice dated 29-4-1994 does not vitiate the impugned order of punishment dated 25-8-1994.

c. Non-submission of property statement and failure to reveal details of property is itself a misconduct under the regulations.

d. Non-submission of property statement was the subject matter of enquiry by the vigilance/ACB authorities and since they had conducted an enquiry in this regard, there was no need to again conduct a departmental enquiry on the same issue.

e. Even otherwise since the punishment imposed on the petitioner, that of stoppage of two increments with cumulative effect, is a minor penalty, the regulations do not contemplate an enquiry being held in this regard and even if this allegation regarding non-submission of statement of immovable property is held to be a charge, under the regulations it is sufficient if a show cause notice is issued and an explanation called for from the employee and no departmental enquiry needs to be conducted.

EXISTENCE OF ALTERNATIVE REMEDY:

Existence of alternative remedy is not a bar for exercise of jurisdiction under Article 226 of the Constitution of India. It is well settled that while existence of an effective alternative remedy would a factor to be taken into consideration by this Court for invoking its jurisdiction under Article 226 of the Constitution, it does not bar the jurisdiction of this Court to entertain a writ petition solely on the ground that the alternative remedy has not been exhausted. This Court under Article 226 of the Constitution of India, normally refuses to exercise its discretion to interfere at the threshold on the ground of availability of an effective alternative remedy. Having admitted the writ petition, which has been pending in this Court for more than eleven years, it is neither just nor proper for this Court to now refuse to exercise its discretion and dismiss the writ petition on the ground of availability of alternative remedy.

I n **ESTATES OFFICER AND MANAGER (RECOVERIES) A.P. INDUSTRIAL INFRASTRUCTURE CORPORATION LTD, HYDERABAD v. RECOVERY OFFICER, DEBTS RECOVERY TRIBUNAL** a Division Bench of this Court held:

“We are not impressed by the submission. It is a true and very well established proposition of law that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court under Article 226 of the Constitution of India. It is equally well settled that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. It may be one of the factors that may have to be taken into consideration in the matter of granting writs. It is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law. The Court in exceptional cases can always issue a writ such as a writ of Certiorari, notwithstanding the fact that the statutory remedies have not been exhausted. Thee are at least two well-recognized exceptions to the doctrine with regard to the exhaustion of statutory remedies. In the first place, it is well settled that where proceedings are taken before a Tribunal under a provision of law, which is *ultra vires*, it is open to a party aggrieved thereby to move the High Court under Article 226 for issuing appropriate writs. In the second place, the doctrine has no application in a case where the impugned order has been made in violation of the principles of natural justice.

It is not possible to dismiss the petitions under Article 226 of the Constitution of India as not maintainable on the ground of there being an alternative remedy available in cases where the Court has entertained and admitted the writ petition and was heard on merits. It is a different matter altogether when the Court in exercise of its discretion refused to interfere even at the threshold on the ground of availability of an alternative and efficacious remedy. But in a case where the Court having admitted

the writ petition and having put the parties to trial normally cannot refuse to exercise its jurisdiction and dismiss the writ petition on the ground of availability of an alternative remedy. It is a matter always well within the discretion of the Court and that discretion is required to be exercised in a judicial and judicious manner. It is equally a well settled proposition of law that where the order is illegal and invalid as being contrary to law, a petition at the instance of person adversely affected by it would lie to the High Court under Article 226 of the Constitution and such a petition cannot normally be rejected on the ground that an appeal lies to the authorities specified under an enactment. It needs no restatement at our hands that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 of the Constitution where the party invoking the jurisdiction has an adequate, alternative and efficacious remedy. The availability of alternative remedies does not oust the jurisdiction of this Court (See for the proposition: Khurai Municipality v. Kamal Kumar, AIR 1965 SC 1321, Baburam v. Zilla Parishad, AIR 1969 SC 556, Hirday Narain v. I.T. Officer, Bareily, AIR 1971 SC 33, and Ram and Shyam Company v. State of Haryana, AIR 1985 SC 1147)"

This contention of the learned counsel for the respondent is therefore liable to rejected.

The second contention that the punishment imposed was only for the charge of authorized absence and not for non-submission of statement of immovable property need not detain this Court in view of the unambiguous language of the impugned order 25-8-1994 wherein it is categorically held that the punishment was being ordered on the petitioner as the allegation of unauthorized absence and his non-submission of immovable property statement were held proved.

While it may be true that non-submission of property statement and failure to reveal details of immovable property by an employee amounts to misconduct under the regulations, the question that arises for consideration is whether a major penalty could be imposed for such a misconduct without a departmental enquiry being conducted prior thereto. The enquiry conducted, with regards non-submission of property statement by the vigilance / ACB authorities is neither a substitute nor does it obviate a departmental enquiry being conducted in accordance with the regulations. While the vigilance/ACB report could be a factor to be taken into consideration, provided it forms part of the record of the departmental enquiry proceedings, it cannot be a substitute for conducting the departmental enquiry itself, more so since the APSEB regulations prescribe it as a prerequisite for imposition of major penalty.

STOPPAGE OF INCREMENTS WITH CUMULATIVE EFFECT WHETHER A MAJOR OR MINOR PENALTY:

The contention that punishment of stoppage of two increments with cumulative effect is a minor penalty, for which no enquiry need be conducted under the regulations, cannot also be accepted. The learned counsel for the respondent relies on Schedule –I to the APSEB (Revised) Conduct Regulations and Discipline & Appeal Regulations which prescribe the competent authorities for imposition of penalties. The schedule, annexed to the Regulations, is the one referred to in Regulation 7(a) ,and categorizes minor penalties and major penalties. Among the minor penalties classified in the schedule, include withholding of increments without cumulative effect and withholding of increments with cumulative effect. Relying on this classification in the schedule to the regulations, learned counsel for the respondent contends that withholding of increments with cumulative effect is also a minor penalty.

As stated supra, the schedule is the one referred to in Regulation 7(a) which prescribes the competent and appellate disciplinary authorities who may impose any of the penalties mentioned in Regulation 5 and the appropriate authorities to whom appeal lies against each of the categories of punishment specified in the schedule. It is clear from Regulation 7(a) that the penalties which can be imposed for proved misconduct are those mentioned in Regulation 5, which reads thus:

"5- Penalties

The following penalties, may, for good and sufficient reasons or for any misconduct specified in regulation 6 and as hereinafter provided, be imposed upon the employees of the Board, namely:

i. Censure

ii. Fine, (to be imposed only in case of employees in Class-IV service):

Note: the penalty shall be subject to the provisions of the payment of Wages Act in respect of those to whom that Act applies.

iii. Withholding of increments or promotion

iv. Reduction to a lower rank in the seniority list or to a lower post or time scale not being lower than that to which he was directly recruited whether in the same class of service, or in another class of service, or to a lower stage in a time scale.

v. (a) Recovery from pay of an employee of the whole or anypart of the pecuniary loss caused to the Board by reason of the negligence, misconduct, or disobedience to lawful orders, of an employee in the discharge of his duties.

(b) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld, where such an order cannot be given effect to.

© Recovery from pay to the extent necessary of the monetary value equivalent to the amount of reduction to a lower stage in time scale ordered where such order cannot be given effect.

Explanation:

i. If one increment is ordered to be postponed without cumulative effect, the amount to be ordered to be withheld is 1 x 12 x Rs.100/- where the rate of increment is Rs.100/-. This will get multiplied depending on the number of increments ordered to be withheld as indicated below:

1) Increment 1 x 12 x 100 = Rs.1200.00

2) Increments 2 x 12 x 100 = Rs.2400.00

3) Increments 3 x 12 x 100 = Rs.3600.00

ii. If one increment is ordered to be postponed with cumulative effect, the amount to be ordered to be withheld will become 1 x 3 x 12 x Rs.100/- where the rate of increment is Rs.100/-. This will get multiplied depending on the number of increments ordered to be withheld as indicated below:

1) Increment 1 x 3 x 12 x 100 = Rs. 3600.00

2) Increments 2 x 3 x 12 x 100 = Rs. 7200.00

3) Increments 3 x 3 x 12 x 100 = Rs.10800.00

iii. In case the punishment of postponing of increment is ordered, can be implemented on partially, the increments may be postponed to the extent possible and for the remaining portion of the punishment, recovery may be ordered as

indicated in paragraphs (i) and (ii) above.

vi. Compulsory retirement otherwise than the retirement of an employee as provided in the Board's Pension Regulations.

vii. Removal from service

viii. Dismissal from service

ix. Suspension, where a person has already been suspended under Regulation 11 to the extent considered necessary by authority imposing the penalty"

Regulation – 5 does not make any distinction between the punishment of withholding of increments without cumulative effect and withholding of increments with cumulative effect. While withholding increments is a penalty under Regulation 5(iii), reduction to a lower stage in the time scale is a penalty specified in Regulation 5(iv). The question which would therefore arise for consideration is whether the punishment of stoppage of increments with cumulative effect is a punishment which falls under Regulation 5(iii) or the one under Regulation 5(iv). Under Regulation 10(1) no enquiry is required to be conducted for imposing punishment under Regulation 5(iii) while regulation 10(2) (a) requires an enquiry officer to be appointed, specific charges to be framed and communicated and enquiry to be held prior to imposition of the punishment specified in Regulation 5(iv).

This question is no longer *res integra.* In **KULWANT SINGH GILL v. STATE OF PUNJAB** the Supreme Court held that the fact of imposition of punishment of withholding of two increments with cumulative effect indisputably means that the two increments earned by the employee was cut off as a measure of penalty forever in his upward march of earning in the higher scale of pay and on expiry of two years the clock started working from that stage afresh. It was held that the insidious effect of the order, by necessary implication, was that the employee was reduced in his time scale by two places and it was in perpetuity during the tenure of his service and that the words, if taken in its true colour or its resultant effect, would make it clear that this punishment would require an enquiry to be held before its imposition.

I n **K.PRASAD v. MANAGING DIRECTOR, APSRTC, MUSHEERABAD, HYDERABAD**, where the punishment imposed was 'annual increments when next falls due be deferred for a period of two years which shall have effect of postponing

future increments', this Court held that this punishment imposed on the employee was a major penalty and since it was held that without a departmental enquiry, as envisaged under the provisions of the APSRTC C.C.C.A. Regulations, the order of the disciplinary authority was liable to be set aside.

In view of the authoritative pronouncement of the Supreme Court and this Court in the aforesaid judgments, stoppage of increment with cumulative effect is a punishment under Regulation 5 (iv) and not under Regulation 5(iii) and as such can only be imposed after the procedural requirement of Regulation 10(2) (a) is complied with. Regulation 10(2)(a) reads thus:

"In every case where it is proposed to impose on a member of a service any of the penalty specified in items (iv), (vi), (vii) and (viii) in Regulation 5, the authority competent to impose the penalty shall appoint an enquiry officer, who shall be superior in rank to the person on whom it is proposed to impose the penalty, or shall itself hold an enquiry either suo motu or on a direction from a higher authority. In every such case the grounds on which it is proposed to take action shall be reduced to the form of definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders in the case. He shalll be required, within a reasonable time, to file a written statement of his defence and to stage whether he desires an oral enquiry or to be heard in person or both. The person charged may, for the purpose of preparing his defence be permitted to inspect and take extracts from such official records as he may specify, provided that the enquiry officer may, for reasons to be recorded in writing refuse such permission, if in his opinion, such records are not relevant for the purpose or it is against public interest to allow access thereto. On receipt of the statement of defence within the specified time or such further time as may have been given, an oral enquiry shall be held if such an enquiry is desired by the person charged or is decided upon by the enquiry officer or is directed by the competent authority. At that enquiry, oral evidence shall be heard as to such of the allegations as are not admitted and the persons charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called a he may wish, provided that the enquiry officer may, for special and sufficient reason to be recorded in writing, refuse to file, call a witness. After the oral enquiry is completed, the person charged shall be entitled file, if he so desires, any further written statement of his defence. If no oral enquiry is held and the person charged desires to be heard in person, a personal hearing shall be given to him. The enquiry officer shall, on completion of the enquiry or the personal hearing of the person charged or both, forward the proceedings of the enquiry to the authority competent to impose the penalty unless he is himself such an officer. The proceedings shall contain the charges framed against the person charged along with the grounds of charge, written statement filed in defence, if any, a sufficient record of the evidence adduced during the oral enquiry, a memorandum of the point urged by the person charged

during the personal hearing, if any, a statement of the findings of the enquiry officer on the different charges and the grounds there for"

Inasmuch as the detailed procedure contemplated under Regulation 10(2)(a) has not been complied with, the punishment imposed for non-submission of the immovable property statement, (which was held to be proved in the impugned order dated 25-8-1994), is liable to be set aside.

The question which, however, still remains for consideration is whether the major penalty of imposition of stoppage of two increments with cumulative effect could have been imposed for the charge of unauthorized absence alone. Such a power undoubtedly exists with the competent authority and punishment of stoppage of two increments with cumulative effect can be imposed for the proved misconduct of unauthorized absence alone.

However, the impugned order of punishment dated 25-8-1994 categorically states that the punishment of stoppage of two increments with cumulative effect was imposed as the allegations of unauthorized absence and non-submission of immovable property statements were held proved. Imposition of punishment is a matter for the disciplinary to decide in terms of the regulations under which such a power is conferred. This Court, while exercising its jurisdiction Article 226 of the Constitution of India neither sits in appeal nor would it substitute the quantum of punishment imposed by the competent authority by another unless the punishment imposed is one which shocks the conscience of this Court.

As the punishment imposed in the present case is both for unauthorized absence and non-submission of immovable property statements, it would not be proper for this Court to delve into the matter and examine whether or not the disciplinary authority would have imposed such a punishment only on the allegation of unauthorized absence having been proved. It is true that even if one charge, among others, is established and the charge held proved is substantial warranting imposition of punishment, it is not for courts to consider whether that charge alone would have weighed with the authority in imposing the punishment in question. In the present case, however, non-submission of property statements was neither the subject matter of a specific charge by way of a charge sheet nor was a departmental enquiry held to enquire into the said allegations. For the first time this allegation

finds place in the second show cause notice dated 29-4-1994 whereby the enquiry report, relating to the enquiry conducted for unauthorized absence pursuant to the charge memo dated 18-10-1993, was enclosed and the petitioner was asked to show cause why stoppage of two increments with cumulative effect not be imposed on him.

The writ petition is partly allowed and the impugned order to the extent it imposes punishment of stoppage of two increments with cumulative effect for non-submission of immovable property statement, is set aside. The disciplinary authority is directed to reconsider and pass appropriate orders of punishment only to the extent the allegation of unauthorized absence has been held proved. Needless to state that this order will not be construed as precluding the authorities, if they chose to do so, from initiating disciplinary action for non-submission of immovable property statements by the petitioner herein. No costs.

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07-2005

LR copy be marked

B/o

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That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Bilal Nazki, the Acting Chief Justice on this Wednesday Sixth Day of July, Two Thousand and Five.

To:

1.One fair copy to the Hon'ble Sri Justice Ramesh Ranganathan (for his Lordships perusal)

2. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi

3. The Secretary, APSEB.
Vidyut Soudha, Hyderabad.
4. The Chairman, APSEB.,
Vidyut Soudha, Hyderabad.

5. Eight L.R. copies

6. The Secretary, A.P. Advocates Association, High Court of A.P. Hyderabad

7. Two C.D. copies